IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1402 OF 2007

Shri Prasan Manilal Jhaveri. ..Petitioner.
Versus
1. The Senior Inspector of Police,
2. Shri Kartik Ashwin Kapadia, &
3. The State of Maharashtra. ..Respondents.

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Mr.Amit Desai, Adv. with Ms.Mandakini D.S.Sinh, Adv. for the Petitioner.
Mr.A.S.Gadkari, APP, for the State.

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CORAM : R.M.S.KHANDEPARKAR AND SMT.V.K.TAHILRAMANI,JJ.

DATED : SEPTEMBER 03, 2007.

P.C.:-

1. Heard. By the present Petition the petitioner is seeking to quash C.R. No.86 of 2007 registered with V.P. Road Police Station, Mumbai under Section 406 of Indian Penal Code.

2. Normally this Court is reluctant to interfere in the matters where the request is for quashing of FIR, particularly when the FIR on the face of it discloses commission of cognizable offence by the accused person/s. In the case in hand, however, perusal of the

complaint as well as further affidavit filed by the police officer who have recorded the FIR it reveals that the FIR has been recorded without there being required material disclosed by the complainant which would reveal a cognizable offence on the part of the person named as accused in the complaint.

3. The grievance of the complainant as revealed from the FIR discloses that the person named as the accused had received a passport of the complainant on pretext of obtaining visa for the complainant to enable him to go Belgium for job which is to be carried out for the accused persons, and the said passport was retained by the accused person and refused to be returned even when the complainant asked for return thereof.

4. The complaint, on the face of it, discloses that the complainant was in employment of the company of which the person who is named as the accused in the complaint is the Director. The complaint further discloses that the said

company has business in diamonds and various diamond-ornaments at various places like Belgium, Mosco, New York, Bangkok, Hongkong, Dubai etc.. The complainant was working as Trainee with the said company in January, 2005 and in February, 2005 the complainant was assigned job at Dubai office of the petitioner's company. Accordingly he had reported to the Dubai office on 17th February, 2005 and while in employment at Dubai, he returned to Mumbai on 15th August, 2006. The complaint further discloses that on 21st August, 2006 consequent to the message received from his brother Himanshu, he approached the petitioner's office at Mumbai and contacted the petitioner who told him that the petitioner's company would like to appoint the complainant at its Belgium office and inquired with the petitioner as to whether the complainant would be willing to accept the said assignment. Having shown his willingness, the petitioner enquired about the passport of the complainant and told the complainant that in order to obtain visa to go to Belgium, he was required to deliver the passport to the

petitioner and accordingly the complainant delivered the passport to the petitioner. Since, thereafter there was no intimation from the petitioner in the matter of assignment at Belgium, the complainant enquired about the same, but, he did not get any satisfactory reply even from his brother and on the brother's advice he went to the office of the petitioner's company on 14th November, 2006 and contacted the petitioner. Whereupon the petitioner demanded signature of the complainant on some blank receipts and papers and the complainant refused to oblige the petitioner in that regard and on that occasion inspite of request to the petitioner to return the passport, the later refused to return the passport of the complainant. With these allegations, the complaint came to be lodged which was sought to be recorded as FIR by Shri.Shantaram S. Talavadekar, PSI attached to V.P. Road Police Station, Mumbai being C.R. No.86 of 2007, as disclosing the offence punishable under Section 406 of Indian Penal Code.

5. Section 406 of Indian Penal Code deals with the punishment for criminal breach of trust. Section 405 of Indian Penal Code provides that whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or dispose of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust". Explanation to Section 405 provides that a person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted

with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

6. Plain reading of the complaint obviously discloses that the complainant was asked as to whether he was willing to go to Belgium for the job to be entrusted to him of the petitioner's company, and that the complainant had shown his willingness in that regard and for that purpose to enable the complainant to go to Belgium he had parted with his passport to the petitioner. It further discloses that the complainant return ticket to Dubai issued by the petitioner's company, which he was in possession, and that the petitioner's company was extending the date of his departure to go to Dubai in that regard.

7. Plain reading of this complaint creates doubt about the bonafide of the claim of the

complainant that he had parted with his passport to the petitioner. On the face of the complaint, it is apparent that the complainant is very well aware of the required formalities which are to be complied with in order to enable a person to travel abroad. Being so, it is to the knowledge of the complainant on the face of the complaint that in order to enable a person to travel abroad he is required to obtain a visa and for that purpose he is required to submit various forms and applications in terms of the provisions of law. At no place in the complaint, the complainant discloses any such formalities having been complied with by the him so as to require him to part with his passport to the petitioner to obtain visa for his alleged travel to Belgium. The complaint nowhere discloses that infact the complainant was entrusted with the job at Belgium as the complainant nowhere refers to any order in that regard having been issued in writing by the petitioner’s company nor the complaint makes any reference to any such order. In such facts and circumstances, obviously the police authorities

before arriving at a conclusion that the grievance made by the petitioner disclosed any cognizable offence in the nature of Section 406 read with Section 405 of Indian Penal Code, it was necessary for the police authorities to ascertain whether infact property in the nature of passport had been really parted with by the complainant and delivered to the petitioner for the reasons alleged in the complaint and infact there has been refusal on the part of the petitioner to return the passport. Such a preliminary inquiry was certainly expected, when on the face of the complaint it nowhere disclosed any criminal breach of trust in relation to the passport of the complainant in the matter of alleged delivery of the passport to the petitioner. It was not a case of the complainant that the passport of the complainant had been either misused by the petitioner or that the complainant has been made to suffer any loss or prejudice on account of parting with his passport to the petitioner, or that there has been any dishonest use or disposal of the complainant’s passport by the petitioner. In

the absence of all these materials, there was absolutely no justification for the police officer to arrive at a conclusion that the complaint of the complainant disclosed the offence punishable under Section 406 of Indian Penal Code and undisputedly apart from the said alleged offence, the complaint did not disclose any cognizable offence on the part of the petitioner. Being so, the petitioner is justified in contending that the police authorities could not have recorded the complaint of the complainant as disclosing any cognizable offence.

8. It is also pertinent to note that the complainant in the complaint has clearly stated that the period for use of the ticket to go again to Dubai issued in favour of the complainant by the petitioner's company was being extended from time to time. In other words the complaint, on the face of it, discloses that the complainant had been in employment of the petitioner for some assignment in Dubai and in that regard even the

petitioner's company had provided a ticket for the complainant. Once these facts are disclosed in the complaint itself, it was certainly expected from the police officer who has 31 years of police service to his credit and 7 years in the post of PSI to get relevant information and cogent material from the complainant regarding his contention that he was asked about the assignment at Belgium and in that regard the petitioner having been taken the passport of the complainant, and not to rush to the conclusion that the complaint disclosed the cognizable offence of the nature punishable under Section 406 of the Indian Penal Code. Failure in that regard on the part of such a police officer, leaves room to doubt about bonafide of the police officer in recording such a complaint as disclosing a cognizable offence of the nature punishable under Section 406 of Indian Penal Code. The affidavit filed by the concerned police officer discloses that the investigating agency after obtaining the detailed report dated 6th April, 2007 from Mr.J.K.Patil and after forwarding the opinion

dated 8th April, 2007 of the Police Inspector (Crimes) to Senior PI of V.P.Road police station and that on he verifying the report having expressed opinion that the materials *prima facie* discloses commission of offence punishable under Section 406 of Indian Penal Code by the petitioner, the report was submitted to the Assistant Commissioner of Police on 11th April, 2007 and the report having been verified by the Deputy Commissioner of Police (Zone-II), Mumbai permission was granted to lodge the FIR. The annexure to the affidavit is merely a letter dated 22nd December, 2006 by the police officer addressed to the petitioner. Though the affidavit relates to various reports and verification of records by the Deputy Commissioner of Police (Zone-II), Mumbai, the affidavit does not disclose the details about any such reports or any such records which could have been verified by the various authorities. It is pertinent to note that the affidavit was filed after various queries made by this Court with the learned APP in the presence of the concerned police officer. Apart from referring

to the alleged fact of verification of the record by various police authorities, no details regarding such reports or record have been disclosed either in the affidavit or in the form of annexures to the affidavit. It is not known as to what materials were perused by such authorities for grant of permission to record the FIR. It is also not understood as to why the permission was necessary to record the FIR. Though, the FIR speaks of granting of permission to lodge the FIR, the learned APP has candidly admitted that for recording a FIR no such permission is required. He has only clarified that earlier complaint was received in November, 2006 and it was only after inquiry that the complaint was registered. It is not known what sort of inquiry was conducted from November, 2006 to April, 2007. The affidavit does not disclose nature of such inquiry or the materials either perused or materials, if any, having been verified in that regard.

9. The complaint, for the reasons stated hereinabove, does not disclose any act which

would reveal on the part of the petitioner to be constituting criminal breach of trust, in our considered opinion there was absolutely no justification for recording of the said complaint as FIR, nor there was any case for the police authorities to take cognizance of the complaint by the complainant. The offence, if any, disclosed from the complaint is clearly of non-cognizable nature. Hence, the Petition needs to be allowed.

10. The petitioner, having been unnecessarily required to face the proceedings in the matter entirely on account of improper handling of the matter and without proper application of mind by the concerned authorities, would have been certainly entitled for compensation as costs while allowing the Petition. However, in the absence of any such prayer, we cannot order payment of costs. However, we will certainly expect from the concerned police authorities to take note of the observations made hereinabove and to take appropriate action against the concerned police officers who have been

unnecessarily over-enthusiastic in ordering to record the impugned FIR and compelling a citizen to approach this Court to get necessary relief in the matter. With these observations, the impugned FIR is quashed. Petition is accordingly allowed with no order as to costs.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]